

1 Neil A. Smith (SBN 63777)
Yaacov Silberman (SBN 257109)
2 RIMON P.C.
One Embarcadero Center, Suite 400
3 San Francisco, CA 94111
4 Phone: (415) 377-9280
Facsimile: (800) 930-7271
5 Email: neil.smith@rimonlaw.com

6 Leslie A. Burgk (*Pro Hac Vice* Application Forthcoming)
LESLIE A. BURGK, P.A.
7 580 Village Blvd, Suite 150
8 West Palm Beach, Florida 33409
561-932-0900 WPB
9 772-408-8086 Facsimile
leslie@leslieburgk.com
10 *Attorney for Defendant*
11 *HYPER NETWORK SOLUTIONS, LLC*

12
13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15

16 THRESHOLD ENTERPRISES LTD., a
17 Delaware corporation,

18 Plaintiff,

19 v.

20 HYPER NETWORK SOLUTIONS, LLC, a
21 Florida limited liability company,

22 Defendant.

Case No. 5:14-cv-01780-HRL

ANSWER OF HYPER NETWORK
SOLUTIONS, LLC TO COMPLAINT;
JURY DEMAND

23 Defendant Hyper Network Solutions, LLC (“Hyper Network”) responds to the
24 Complaint for trademark infringement (“Complaint”) filed by Plaintiff Threshold Enterprises
25 Ltd. (“Threshold”) as follows:
26
27
28

JURISDICTION

1. Hyper Network admits that this Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338(a), 15 U.S.C. §§ 1051, *et seq.*, and 28 U.S.C. §§ 1338(b) and 1367.

2. Hyper Network does not contest personal jurisdiction for purposes of this action only.

VENUE

3. Hyper Network does not contest venue in this district for purposes of this action only.

INTRADISTRICT ASSIGNMENT

4. Hyper Network admits that this case is an Intellectual Property Action and is, therefore, not subject to assignment to a particular location or division under Local Rule 3-2(c) and General Order No. 44

THE PARTIES

5. Hyper Network is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and on that basis denies them.

6. Hyper Network admits only that it was a Florida limited liability company with its principal place of business located at 3750 Investment Lane, Suite 2, West Palm Beach, Florida 33404. It is now non-existent, having transferred its assets to Network Solutions of Florida LLC. Hyper Network admits that it used the mark NU-SOURCE on a coconut oil supplement product sold to one United States' retailer. Hyper Network admits that it owned and operated a website at <nusourcenaturals.com>; the remainder of the allegations in Paragraph 6 are otherwise denied.

FACTS GIVING RISE TO ALL CLAIMS FOR RELIEF

7. Hyper Network is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and on that basis denies them, except that Hyper Network admits that the Exhibit A appears to be a copy of the numbered

1 registration.

2 8. Hyper Network is without knowledge or information sufficient to form a
3 belief as to the truth of the allegations of paragraph 8 and on that basis denies them, except
4 that Hyper Network admits that the Exhibit B appears to be a copy of the numbered
5 registration.

6 9. Hyper Network is without knowledge or information sufficient to form a
7 belief as to the truth of the allegations of paragraph 9 and on that basis denies them.

8 10. Hyper Network is without knowledge or information sufficient to form a
9 belief as to the truth of the allegations of paragraph 10 and on that basis denies them.

10 11. Hyper Network denies the allegations of paragraph 11.

11 12. Hyper Network denies the allegations of paragraph 12.

12 13. Hyper Network admits only that it sold a coconut oil supplement using its
13 federally registered U.S. trademark for NU-SOURCE to one United States' retailer, but
14 denies the remainder of paragraph 13.

15 14. Hyper Network admits only that it sold a NU-SOURCE marked coconut oil
16 dietary and nutritional supplement to a single United States retailer; the remainder of the
17 allegations of paragraph 14 are otherwise denied.

18 15. Hyper Network denies the allegations of paragraph 15.

19 16. Hyper Network admits only that it owned and has operated the website
20 address <nusourcenaturals.com>; the remainder of the allegations of paragraph 16 are
21 otherwise denied.

22 17. Hyper Network admits only that it had a trademark registration for NU-
23 SOURCE (Serial No. 77/693,465 and Registration No. 3686026) which was acquired by way
24 of assignment. Hyper Network further admits only that the mark is registered for dietary and
25 nutritional supplements and that the declaration of first use of the NU-SOURCE mark was
26 "At least as early as 03/01/2006". Hyper Network denies the remainder of the allegations in
27 paragraph 17.
28

FIRST CAUSE OF ACTION

ALLEGED FEDERAL TRADEMARK INFRINGEMENT

18. Hyper Network repeats and incorporates by reference its responses in Paragraphs 1-17 above as though fully set forth herein.

19. Hyper Network denies the allegations of Paragraph 19.

20. Hyper Network denies the allegations of Paragraph 20.

21. Hyper Network denies the allegations of Paragraph 21.

22. Hyper Network denies the allegations of Paragraph 22.

23. Hyper Network denies the allegations of Paragraph 23.

24. Hyper Network denies the allegations of Paragraph 24.

SECOND CAUSE OF ACTION

ALLEGED COMMON LAW TRADEMARK INFRINGEMENT

25. Hyper Network repeats and incorporates by reference its responses in Paragraphs 1-24 above as though fully set forth herein.

26. Hyper Network denies the allegations of Paragraph 26.

27. Hyper Network denies the allegations of Paragraph 27.

28. Hyper Network denies the allegations of Paragraph 28.

29. Hyper Network denies the allegations of Paragraph 29.

30. Hyper Network denies the allegations of Paragraph 30.

31. Hyper Network denies the allegations of Paragraph 31.

THIRD CAUSE OF ACTION

ALLEGED FEDERAL TRADEMARK DILUTION

32. Hyper Network repeats and incorporates by reference its responses in Paragraphs 1-31 above as though fully set forth herein.

33. Hyper Network denies the allegations of Paragraph 33.

34. Hyper Network denies the allegations of Paragraph 34.

35. Hyper Network denies the allegations of Paragraph 35.

FOURTH CAUSE OF ACTION

ALLEGED FEDERAL UNFAIR COMPETITION

36. Hyper Network repeats and incorporates by reference its responses in Paragraphs 1-35 above as though fully set forth herein.

37. Hyper Network denies the allegations of Paragraph 37.

38. Hyper Network denies the allegations of Paragraph 38.

39. Hyper Network denies the allegations of Paragraph 39.

FIFTH CAUSE OF ACTION

ALLEGED STATE AND COMMON LAW UNFAIR COMPETITION

40. Hyper Network repeats and incorporates by reference its responses in Paragraphs 1-39 above as though fully set forth herein.

41. Hyper Network denies the allegations of Paragraph 41.

42. Hyper Network denies the allegations of Paragraph 42.

43. Hyper Network denies the allegations of Paragraph 43.

44. Hyper Network denies the allegations of Paragraph 44.

45. Hyper Network denies the allegations of Paragraph 45.

46. Hyper Network denies the allegations of Paragraph 46.

SIXTH CAUSE OF ACTION

**ALLEGED VIOLATION OF THE ANTI-CYBERSQUATTING CONSUMER
PROTECTION ACT**

47. Hyper Network repeats and incorporates by reference its responses in Paragraphs 1-46 above as though fully set forth herein.

48. Hyper Network denies the allegations of Paragraph 48.

49. Hyper Network denies the allegations of Paragraph 49.

50. Hyper Network denies the allegations of Paragraph 50.

RELIEF

Hyper Network denies that Threshold is entitled to any of the requests for relief

enumerated in its Complaint and respectfully requests that the Court enter judgment against Threshold on all of Threshold's claims.

HYPER NETWORK'S AFFIRMATIVE AND OTHER DEFENSES

In further response to the Complaint, and without conceding or assuming that Hyper Network bears the burden of proof on such issues, Hyper Network alleges the following affirmative and other defenses and reserves the right to amend its Answer as additional information becomes available:

First Defense

A. Hyper Network has not infringed any Federal or state law claims or rights of Threshold.

Second Defense

B. Threshold fails to state any claim against Hyper Network upon which relief may be granted.

Third Defense

C. On information and belief, a reasonable opportunity for discovery will establish that Threshold is barred in whole or in part under principles of equity, including waiver, estoppel, unclean hands, and/or laches.

Fourth Defense

D. Threshold is not entitled in injunctive relief because any alleged remedy is not immediate or irreparable. To the extent Threshold proves that it would be entitled to any relief, it would have an adequate remedy at law. Moreover, the public interest and balance of hardships disfavors an injunction under the circumstances of this case.

Fifth Defense

E. Any use in whole or in part of the words of Threshold's trademarks is good faith, non-trademark, descriptive use. The terms "source" and "naturals" are commonly used terms in the supplement industry. Further, the Plaintiff's registrations contain disclaimers of the exclusive right to use the term "naturals."

Sixth Defense

F. The Defendant owned and used a lawfully acquired federal U.S. trademark registration no. 3686026, which was subject to examination at the United States Patent & Trademark Office.

Hyper Network's investigation of the claims and its defenses is ongoing. In addition to the defenses set forth herein, Hyper Network expressly reserves the right to allege and assert any additional defenses under Rule 8 of the Federal Rules of Civil Procedure, the laws of the United States, and any other defense, at law or in equity, that may now exists or become known or available in the future based upon discovery and further investigation in this case.

HYPER NETWORK'S REQUEST FOR RELIEF

Hyper Network respectfully requests that this Court:

A. Dismiss with prejudice Threshold's Complaint against Hyper Network in its entirety;

B. Deny any and all relief sought by Threshold.

C. Declare this to be an exceptional case under 35 U.S.C. § 285 and award Hyper Network its attorneys' fees;

D. Award Hyper Network its costs of this action; and

E. Award Hyper Network whatever further relief the Court deems just and proper.

DATED: June 16, 2014

RIMON P.C.

By: /s/ Neil A. Smith

Neil A. Smith

Yaacov Silberman

Attorneys for Defendant *Hyper Network Solutions, LLC*

DEMAND FOR JURY TRIAL

51. Hyper Network requests a jury trial on all issues triable by a jury.

DATED: June 16, 2014

RIMON P.C.

By: /s/ Neil A. Smith

Neil A. Smith

Yaacov Silberman

Attorneys for Defendant *Hyper Network
Solutions, LLC*